

NILA TYRREL

IBLA 80-317

Decided August 18, 1980

Appeal from decision of the Montana State office, Bureau of Land Management, declaring mining claims abandoned and void. MCA MT 07.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment-- Mining Claims: Recordation.

Under 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976).

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

3. Notice: Generally--Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

APPEARANCES: Nila Tyrrel, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated December 28, 1979, by the Montana State Office, Bureau of Land Management (BLM), declaring 23 mining claims located in Broadwater County, Montana, 1/ abandoned and void because appellant had failed to comply with recordation requirements under the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the pertinent regulations.

Twenty of appellant's claims were located prior to October 21, 1976, and three were located in 1978. BLM returned appellant's certificates of location for all 23 claims on the ground that they were not timely filed pursuant to FLPMA, supra, and the applicable regulation, which provides:

1/ The claims and their dates of location are:

CLAIM NAME	DATE OF LOCATION
Bluebird #1	August 9, 1964
Bluebird #2	August 9, 1964
Bluebird #3	August 10, 1964
Bluebird IV	No date shown on certificate
BB 5	April 8, 1971
BB 6	July 28, 1973
BB 7	August 11, 1973
BB 8	August 11, 1973
BB 9	August 11, 1973
BB 10	August 11, 1973
BB 11	July 28, 1973
BB 12	August 18, 1973
BB 13	August 19, 1973
BB 14	August 19, 1973
BB 15	August 19, 1973
BB 16	August 19, 1973
Bluebird I (amended)	September 1, 1970
Bluebird II (amended)	September 1, 1970
Bluebird III (amended)	September 1, 1970
Eureka	July 31, 1964
HAS 22	September 4, 1978
HAS 24	September 4, 1978
HAS 25	September 4, 1978

43 CFR 3833.1 2 Manner of recordation--Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. * * *

(b) The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal Land shall file (file shall mean being received and dated stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site filed under state law * * *.

The certificates of location for the Bluebird Nos. 1 through 3, IV, the BB 5 through 16 claims were filed with BLM on November 16, 1979. The certificates of the Bluebird I, II, and III amended claims were filed on November 29, 1979. The certificate for the Eureka claim was filed on November 26, 1979. All three certificates for the HAS claims bear 2 BLM date stamps each, one for October 2, 1979, and one for November 16, 1979.

[1, 2] The above regulations, implementing section 314(b) of FLPMA, are mandatory and must be complied with. John Walter Chaney, 46 IBLA 229 (1980). For the 20 claims located before October 21, 1976, appellant had until October 22, 1979, to record the location certificate with BLM. For the three HAS claims, the certificates of location had to be recorded with BLM within 90 days of September 4, 1978, their date of location. Failure to timely file the required certificates is deemed conclusively to constitute an abandonment of the claims by the owner. James E. Cooper, 48 IBLA 175 (1980).

Appellant states on appeal that she was misadvised as to recordation requirements by the Broadwater county clerk. Appellant also mentions some changes of address, and asserts that she tried to comply in good faith with all prerequisites of recordation.

[3] Even if appellant had been misadvised by a Federal employee, rather than a Montana county clerk, erroneous information could not create any rights not authorized by law. Nevada Pacific Co., Inc., 46 IBLA 208 (1980). Moreover, appellant's lack of success in timely complying with all filing requirements cannot provide a basis for waiver of these requirements. All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations. James E. Cooper, supra; 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). See Robert Willing, 48 IBLA 39, 41 (1980).

We note in closing that appellant may relocate these claims for locatable minerals and file notice as provided in 43 CFR 3833.1, subject to any intervening rights of third parties, and assuming no intervening closure of the land to mining location.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge

